

(b) The six percent limit also applies to contract modifications, including modifications involving—

(1) Work not initially included in the contract. Apply the six percent limit to the revised total estimated construction cost.

(2) Redesign. Apply the six percent limit as follows—

(i) Add the estimated construction cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the six percent statutory limitation.

(c) The six percent limit applies only to that portion of the contract (or modification) price attributable to the preparation of designs, plans, drawings, and specifications. If a contract or modification also includes other services, the part of the price attributable to the other services is not subject to the six percent limit.

236.609 Contract clauses.

236.609-70 Additional provision and clause.

(a)(1) Use the clause at 252.236-7009, Option for Supervision and Inspection Services, in solicitations and contracts for A-E services when—

(i) The contract will be fixed price; and

(ii) Supervision and inspection services by the A-E may be required during construction.

(2) Include the scope of such services in appendix A of the contract.

(b) Use the provision 252.236-7011, Overseas Architect-Engineer Services—Restriction to United States Firms, in solicitations for A-E contracts that are estimated to exceed \$500,000 and are to be performed in Japan, in any North Atlantic Treaty Organization member country, or in countries bordering the Arabian Gulf.

[56 FR 36421, July 31, 1991, as amended at 62 FR 2858, Jan. 17, 1997]

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Do not use Optional Form 347, Order for Supplies and Services, (see 213.505-2).

PART 237—SERVICE CONTRACTING

Sec.

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36424, July 31, 1991, unless otherwise noted.

Subpart 237.1—Service Contracts—General

237.102 Policy.

To the maximum extent practicable, acquire services on the basis of the task to be performed rather than on the basis of the number of hours to be provided.

[56 FR 67220, Dec. 30, 1991]

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited for entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States (to include any U.S. commonwealth, territory, or possession) at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

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(2) The contract will be carried out on a Government-owned but privately operated installation; or

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983.

(b) Under Section 2907 of Public Law 103-160, this prohibition does not apply to services at installations being closed (see subpart 237.74).

[60 FR 61599, Nov. 30, 1995]

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in Public Law 101-165, section 9002. Personal service contracts for expert and consultant services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

(1) The duties are of a temporary or intermittent nature;

(2) Acquisition of the services is advantageous to the national defense;

(3) DoD personnel with necessary skills are not available;

(4) Excepted appointment cannot be obtained;

(5) A nonpersonal services contract is not practicable;

(6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and

(7) Any other determination required by statutes has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(1) Direct health care services provided in medical treatment facilities; and

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons

with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR part 6 competition requirements (see 206.001(b)).

(C) Approval requirements for—

(1) Direct health care personal service contracts (see 237.104(b)(ii)(A)(1)) and a pay cap are in DoDI 6025.5, Personal Services Contracting Authority for Direct Health Care Providers. Requests to enter into a personal service contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see 237.104(b)(ii)(A)(2)), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the com-

mander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15, except the following which shall not exceed the highest rate payable to a GS-18—

(A) Professional engineering services primarily involving research and development; or

(B) Professional services involving physical sciences, natural sciences, or medicine.

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and

per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

[56 FR 36424, July 31, 1991, as amended at 60 FR 2888, Jan. 12, 1995; 60 FR 61599, Nov. 30, 1995]

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed one year.

The nature of the duties must be—

(i) Temporary (not more than one year); or

(ii) Intermittent (not cumulatively more than 130 days in one year).

(2) The following categories of service contracts, funded by annual appropriations, are authorized to extend beyond the end of the fiscal year—

(i) One year contracts for maintenance of tools, equipment, or facilities (see 10 U.S.C. 2410a(1));

(A) Tools generally are items found in supply groups 51 and 52, such as hand and power tools, gauges, measuring devices, etc.

(B) Examples of equipment or facilities maintenance services include—

(1) Custodial or housekeeping services;

(2) Security or fire protection services;

(3) Refuse collection;

(4) Grounds or surfaced area maintenance;

(5) Heating systems operation and maintenance;

(6) Military family housing maintenance;

(7) Energy monitoring control systems maintenance and repair;

(8) Commissary refrigeration maintenance and repair;

(9) Medical facility real property maintenance management;

(10) Hospital aseptic maintenance management;

(11) Animal or pest control;

(12) Maintenance of flight simulators;

(13) Maintenance of computers and associated hardware; and

(14) Maintenance of weapon systems;

(ii) One year contracts for depot maintenance (see 10 U.S.C. 2410a(3));

(iii) Multi-year service contracts;

(iv) One year requirements or indefinite quantity contracts, as defined in FAR 16.503 and FAR 16.504, in which the minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (but see FAR 32.705–1(b));

(v) Personal service contracts for experts or consultants or contracts for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year; or

(vi) One year contracts for operation of Government equipment (see 10 U.S.C. 2410a(4)).

[56 FR 36424, July 31, 1991, as amended at 57 FR 14994, Apr. 23, 1992]

237.109 Services of quasi-military armed forces.

See 237.102–70b for prohibition on contracting for firefighting or security-guard functions.

[60 FR 61599, Nov. 30, 1995]

237.170 Uncompensated overtime.

237.170–1 Scope.

This section implements section 834 of Pub. L. 101–510 (10 U.S.C. 2331).

[56 FR 67220, Dec. 30, 1991]

237.170–2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

[56 FR 67220, Dec. 30, 1991, as amended at 57 FR 14995, Apr. 23, 1992]

237.170-3 Solicitation provision.

Use the provision at 252.237-7019, Identification of Uncompensated Overtime, in all solicitations estimated at \$100,000 or more, for services to be acquired on the basis of the number of hours to be provided.

[56 FR 67220, Dec. 30, 1991, as amended at 57 FR 14995, Apr. 23, 1992]

Subpart 237.2—Advisory and Assistance Services

237.203 Types of advisory and assistance services.

(d) *Engineering and technical service.*

(i) Engineering and technical services consist of—

(A) Contract field services, which are engineering and technical services provided on site at Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies;

(B) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities; and

(C) Field service representatives, which are employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

(ii) Every contract for engineering and technical services alone or as part of an end item, shall—

(A) Show those services as a separately priced line item;

(B) Contain definitive specifications for the services; and

(C) Show the work-months involved.

(iii) Agency heads may authorize personal service contracts for contract field services to meet an unusual essential mission need. The authorization will be for an interim period only.

237.203-70 Acquisition of audit services.

(a) *General policy.* (1) Departments and agencies shall not contract for audit services unless the cognizant DoD audit organization determines

that expertise required to perform the audit is not available within the DoD audit organization, or temporary audit assistance is required to meet audit reporting requirements mandated by law or DoD regulation.

(2) DoDD 7600.2, Audit Policies, provides DoD audit policies.

(3) DoDI 7600.6, Audit of Nonappropriated Fund Instrumentalities and Related Activities, provides guidance to audit organizations for audits of non-appropriated fund organizations.

(4) DoD 7600.7-M, Internal Audit Manual, chapter 20, provides policy and guidance to DoD audit organizations for the monitoring of audit services provided by non-Federal auditors.

(b) *Contract period.* Except in unusual circumstances, contracts for recurring audit services shall be awarded for a one year period with at least two option years.

(c) *Approvals.* Contracting officers shall not issue a solicitation for audit services unless the requiring activity provides evidence that the cognizant DoD audit organization has approved the statement of work. The requiring agency shall obtain the same evidence of approval for subsequent material changes to the statement of work.

(d) *Solicitation provisions and contract clauses.* (1) Use the provision of 252.237-7000, Notice of Special Standards of Responsibility, in solicitations for audit services.

(2) Use the clause at 252.237-7001, Compliance with Audit Standards, in solicitations and contracts for audit services.

[56 FR 36424, July 31, 1991, as amended at 57 FR 42632, Sept. 15, 1992]

237.205 Management controls.

DoD procedures are in DoDD 4205.2, DoD Contracted Advisory and Assistance Services.

237.206 Requesting activity responsibilities.

(b) On acquisitions for studies, the purchase request package must contain a signed statement from the technical officer responsible for the study stating that the Defense Technical Information Center (DTIC) and other information sources have been queried, that evidence of those queries are on file,

and no existing scientific or technical report could fulfill the requirement.

(c) The authority, without redelegation authority (see DoDD 4205.2), to approve the use of advisory and assistance services in contracts over \$50,000 is—

- (i) An SES manager;
- (ii) A general or flag officer;
- (iii) An officer in O-6 grade filling a general or flag officer level position; or
- (iv) An officer in O-6 grade who has subordinate SES personnel.

237.270 Master agreements.

Section 2304 of Title 10, U.S.C., authorizes award of master agreements under which orders may be issued for specific contract advisory and assistance services (CAAS). The authority to award master agreements expires September 30, 1994.

[58 FR 28471, May 13, 1993]

237.270-1 Establishing agreements.

(a) Use this section only for types of advisory and assistance services described in FAR 37.203.

(b) Establish agreements using competitive procedures.

(c) Use the procedures for basic ordering agreements (see FAR 16.703) except—

(1) Synopses solicitations for agreements as if they were service contracts expected to exceed \$25,000;

(2) Establish agreements with at least three of the sources submitting offers; and

(3) Establish agreements for a period not to exceed two years, and do not extend them.

237.270-2 Ordering procedures.

(a) Ordering procedures for master agreements are the same as for basic ordering agreements, except that requests for proposals for individual orders need not be synopsized, nor is a justification and approval required. Orders under master agreements are an additional circumstance permitting full and open competition after exclusion of sources (FAR subpart 6.2).

(b) Before placing an order under a master agreement, the contracting officer—

(1) Must reasonably expect that at least two sources with established

agreements will submit offers or an order cannot be placed against an agreement;

(2) Shall request offers from all agreements holders;

(3) Shall ensure the statement of work clearly specifies the tasks to be performed;

(4) Shall accept the offer most advantageous to the Government, considering all relevant factors specified in the request for offers;

(5) Shall synopses issued orders in accordance with FAR 5.302; and

(6) Shall ensure orders have an identifiable deliverable.

237.270-3 Limitation.

The total value of orders issued under master agreements in a fiscal year by any contracting activity (as defined in 202.101) shall not exceed 30 percent of the value of all contracts for advisory and assistance services awarded by that activity during fiscal year 1989. This limitation may be increased from 30 percent to not more than 50 percent if—

(a) The head of the contracting activity (HCA) waives the 30 percent limitation. Each waiver shall be in the form of a determination and finding prepared and processed in accordance with department/agency procedures. The determination and finding must specify that the use of master agreements is necessary to further the policy of acquiring advisory and assistance services on the basis of the task to be performed rather than on the basis of the number of hours provided; and

(b) The agency publishes a notice of the waiver in the FEDERAL REGISTER and 60 days have passed since the notice of the HCA waiver appeared in the FEDERAL REGISTER. FEDERAL REGISTER notices shall be forwarded for publication in accordance with agency procedures.

237.270-4 Reporting requirements.

(a) Each department and agency shall provide an annual report to OSD, ATTN: OUSD(A)DP(CPA), not later than November 15 of each year. The report control symbol is DD-P&L(A) 1849. The report shall include—

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237.7004

(1) The total number of master agreements awarded (with names of contractors and type of CAAS being acquired) and estimated dollar value of each agreement;

(2) The number of task orders awarded under each master agreement (by contractor) and dollar value of each (including modifications); and

(3) The period covered by the report.

(b) Each department and agency shall centrally maintain the following information, for all master agreements expected to involve work in excess of \$2 million (including modifications), on a fiscal year basis—

(1) The number of bid protests filed, number sustained, and number of awards terminated during the competition for master agreements and task orders;

(2) The program's effect on the procurement administrative leadtime for CAAS;

(3) Statements of work describing the services contracted for and the source evaluation criteria used to evaluate proposals for award;

(4) The level of small business participation in the program; and

(5) The number of contracts where a contractor certified that a conflict of interest exists under the regulations implementing section 8141 of the National Defense Authorization Act for FY89, the nature of the conflict of interest, and the steps taken to resolve such conflicts of interest among firms that qualify for master agreements.

Subpart 237.70—Mortuary Services

237.7000 Scope.

This subpart contains acquisition procedures for contracts for mortuary services (the care of remains) for military personnel within the U.S. Departments/agencies may use these procedures as guidance in areas outside the U.S. for both deceased military and civilian personnel.

237.7001 Method of acquisition.

(a) *Requirements type contract.* By agreement among the military activities, one activity in each geographical area will contract for the estimated requirements for the care of remains for all military activities in the area. Use

a requirements type contract (see FAR 16.503) when the estimated annual requirements for the activities in the area are ten or more.

(b) *Purchase order.* Where no contract exists, use DD Form 1155, Order for Supplies and Services/Request for Quotations, to obtain mortuary services.

237.7002 Area of performance.

Determine and define the geographical area to be covered by the contract using the following general guidelines—

(a) Use political boundaries, streets, or other features as demarcation lines.

(b) The size should be roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served.

(c) If the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

237.7003 Distribution of contracts.

In addition to normal contract distribution, send three copies of each contract to each activity authorized to use the contract, and two copies to each of the following—

(a) HQDA (TAPC-PEC-D), Alexandria, VA 22331.

(b) Commander, Naval Medical Command, Department of the Navy (MED 3141), 23rd and E Streets, NW, Washington, DC 20372.

(c) Headquarters, AFMPC-MPCCM, Randolph AFB, TX 78150.

237.7004 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237-7002, Award to Single Offeror, in all sealed bid solicitations for mortuary services. Use the basic provision with its Alternate I in all negotiated solicitations for mortuary services.

(b) Use the following clauses in all mortuary service solicitations and contracts, except do not use the clauses at 252.237-7004, Area of Performance, and 252.237-7010, Facility Requirements, in

solicitations or contracts that include port of entry requirements—

(1) 252.237-7003, Requirements, (insert activities authorized to place orders in paragraph (e) of the clause);

(2) 252.237-7004, Area of Performance;

(3) 252.237-7005, Performance and Delivery;

(4) 252.237-7006, Subcontracting;

(5) 252.237-7007, Termination for Default;

(6) 252.237-7008, Group Interment;

(7) 252.237-7009, Permits;

(8) 252.237-7010, Facility Requirements; and

(9) 252.237-7011, Preparation History.

(c) Use the clause at FAR 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts that include port of entry requirements.

Subpart 237.71—Laundry and Dry Cleaning Services

237.7100 Scope.

This subpart contains acquisition procedures for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7101 General.

(a) Except for hospital requirements, acquire laundry and dry cleaning services on a count-of-articles basis.

(b) Laundry services in support of hospitals may be acquired on the basis of a count-of-articles or by bulk weight.

(1) Acquisitions by weight may be on either a presorted (bag type) or unsorted (simple bulk weight) basis.

(2) In selecting the basis, consider such factors as price, administrative costs, aseptic requirements, risk of contamination or cross-contamination, and volume and nature of articles to be serviced.

237.7102 Solicitation provisions and contract clauses.

(a) Use the provision at 252.237-7012, Instruction to Offerors (Count-of-Articles), in solicitations for laundry and dry cleaning services to be provided on a count-of-articles basis.

(b) Use the provision at 252.237-7013, Instruction to Offerors (Bulk Weight), in solicitations for laundry services to be provided on a bulk weight basis.

(c) Use the clause at 252.237-7014, Loss or Damage (Count-of-Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count-of-articles basis.

(d) Use the clause at 252.237-7015, Loss or Damage (Weight of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a bulk weight basis.

(1) Insert a reasonable per pound price in paragraph (b) of the clause, based on the average per pound value. When the contract requires laundry services on a bag type basis, insert reasonable per pound prices by bag type.

(2) Insert an appropriate percentage in paragraph (e) of the clause, not to exceed eight percent.

(e) Use the clause at 252.237-7016, Delivery Tickets, in all solicitations and contracts for laundry and dry cleaning services.

(1) Use the clause with its Alternate I when services are for bag type laundry to be provided on a bulk weight basis.

(2) Use the clause with its Alternate II when services are unsorted laundry to be provided on a bulk weight basis.

(f) Use the clause at 252.237-7017, Individual Laundry, in solicitations and contracts for laundry and dry cleaning services to be provided to individual personnel.

(1) Insert the number of pieces of outer garments in paragraphs (d) (1) and (2) of the clause.

(2) The number of pieces and composition of a bundle in paragraphs (d) (1) and (2) of the clause may be modified to meet local conditions.

(g) Use the clause at 252.237-7018, Special Definitions of Government Property, in all solicitations and contracts for laundry and dry cleaning services.

[56 FR 36424, July 31, 1991, as amended at 62 FR 34127, June 24, 1997]

Subpart 237.72—Educational Service Agreements

237.7200 Scope.

(a) This subpart prescribes acquisition procedures for educational services from schools, colleges, universities, or other educational institutions. This subpart does not include tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program.

(b) As used in the subpart—

(1) “*Facilities*” do not include the institution’s dining rooms or dormitories; and

(2) “*Fees*” does not include charges for meals or lodging.

237.7201 Educational service agreement.

(a) An educational service agreement is not a contract, but is an ordering agreement under which the Government may order educational services.

(b) Educational service agreements provide for ordering educational services when—

(1) The Government pays normal tuition and fees for educational services provided to a student by the institution under its normal schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the institution under the institution’s normal rules and in courses and curricula which the institution offers to all students meeting admission requirements.

237.7202 Limitations.

(a) Make no agreement under this subpart which will result in payment of Government funds for tuition or other expenses for training in any legal profession, except in connection with the detailing of commissioned officers to law schools under 10 U.S.C. 2004.

(b) Educational service agreements are not used to provide special courses or special fees for Government students.

237.7203 Duration.

(a) Educational service agreements are for an indefinite duration and remain in effect until terminated.

(b) The issuing activity must establish procedures to review each educational service agreement at least once each year. Review dates should consider the institution’s academic calendar and occur at least 30 days before the beginning of a term. The purpose of the review is to incorporate changes to reflect requirements of any statute, Executive Order, FAR, or DFARS.

(c) If the contracting officer and the institution do not agree on required changes, terminate the agreement.

237.7204 Format and clauses for educational service agreements.

Educational service agreements under this subpart shall be in the following format. Add to the schedule any other provisions necessary to describe the requirements, if they are consistent with the following provisions and the policy of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

EDUCATIONAL SERVICE AGREEMENT

Agreement No. _____

1. This agreement entered into on the _____ day of _____ 19____, is between the Government, represented by the Contracting Officer, and the Contractor, (name of institution), an educational institution located in _____ (city), _____ (state).

2. This agreement is for educational services to be provided by the Contractor to Government personnel at the Contractor’s institution. The Contractor shall provide instruction with standard offerings of courses available to the public.

3. The Government shall pay for services under the Contractor’s normal schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

4. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by statutes, executive orders, the Federal Acquisition Regulation, or the Defense Federal Acquisition Regulation Supplement. Changes required to be made by modification to this agreement or by issuance of a superseding agreement. If mutual agreement on the changes cannot be reached, the Government will terminate this agreement.

5. The parties may amend this agreement only by mutual consent.

6. This agreement shall start on the date in paragraph 1 and shall continue until terminated.

7. The estimated annual cost of this agreement is \$ _____. This estimate is for administrative purposes only and does not impose any obligation on the Government to request any services or make any payment.

8. Advance payments are authorized by 10 U.S.C. 2396(a)(3).

9. Submit invoices to: _____ (name and address of activity).

SCHEDULE PROVISIONS

1. *Ordering procedures and services to be provided.* (a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision.

(b) The Government will request educational services under this agreement by a (insert type of request, such as, delivery order, official Government order, or other written communication). The (insert type of request, such as, delivery order, official Government order, or other written communication) will contain the number of this agreement and will designate as students at the Contractor's institution one or more Government-selected persons who have already been accepted for admission under the Contractor's usual admission standards.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as any other students enrolled in the institution.

(d) Upon enrolling each student under this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees—

(i) Determine the resident or nonresident status of the student;

(ii) Notify the student and the Contracting Officer of the determination. If there is an appeal of the determination;

(iii) If there is an appeal of the determination, process the appeal under the Contractor's standard procedures;

(iv) Notify the student and Contracting Officer of the result; and

(v) Make the determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student under this agreement before the effective date of a request for services in the form specified in paragraph (b) of this schedule.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course without the Contractor's consent.

3. *Payment.* (a) The Government shall pay the Contractor the normal tuition and fees which the Contractor charges any students

pursuing the same or similar curricula, except for any tuition and fees which this agreement excludes. The Contractor may change any tuition and fees, provided—

(1) The Contractor publishes the revisions in a catalog or otherwise publicly announces the revisions;

(2) Applies the revisions uniformly to all students studying the same or similar curricula;

(3) Provides the Contracting Officer notice of changes before their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to students under this agreement.

(c) If the Contractor regularly charges higher tuition and fees for nonresident students, the Contractor may charge the Government the normal nonresident tuition and fees for students under this agreement who are nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of the student residing in the State as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees which relate directly to enrollment as a student. Tuition and fees may include—

(i) Penalty fees for late registration or change of course caused by the Government;

(ii) Mandatory health fees and health insurance charges; and

(iii) Any flat rate charge applicable to all students registered for research that appears in the Contractor's publicly announced fee schedule.

(e) The Contractor shall not charge the Government for—

(i) Permit charges, such as vehicle registration or parking fees, unless specifically authorized in the request for service; and

(ii) Any equipment, refundable deposits, or any items or services (such as computer time) related to student research.

(f) Normally, the Contractor shall not directly charge individual students for application fees or any other fee chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor may charge the student. When the Contractor receives payment from the Government, the Contractor shall fully reimburse the student.

(g) For each term the Contractor enrolls students under this agreement, the Contractor shall submit _____ copies of an invoice listing charges for each student separately. The Contractor shall submit invoices within _____ days after the start of the term and shall include—

(i) Agreement number and inclusive dates of the term;

(ii) Name of each student;

(iii) A list showing each course for each student if the school charges by credit hour;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school); and

(v) A breakdown of charges for each student, including credit hours, tuition, application fee, and other fees. Provide a total for each student and a grand total for all students listed on the invoice.

(h) If unforeseen events require additional charges that are otherwise payable under the Contractor's normal tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. The Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(i) The Contractor shall apply any credits resulting from withdrawal of students, or from any other cause under its standard procedures, to subsequent invoices submitted under this agreement. Credits should appear on the first invoice submitted after the action resulting in the credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. The Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.* (a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government will furnish _____ copies of the orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If withdrawal occurs before the end of a term, the Government will pay any tuition and fees due for the current term. The Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for any students in effect on the date of withdrawal.

(d) Withdrawal of students by the Government will not be the basis for any special charge or claim by the Contractor other than charges under the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to an address supplied by the Contracting Officer) one copy of an official transcript showing all work by the student at the institution until such withdrawal or graduation.

6. *Student teaching.* The Government does not anticipate the Contractor awarding fellowships and assistantships to students attending school under this agreement. However, for graduate students, should both the student and the Contractor decide it to be in

the student's best interests to assist in the institution's teaching program, the Contractor may provide nominal compensation for part-time service. Base the compensation on the Contractor's practices and procedures for other students of similar accomplishment in that department or field. The Contractor shall apply the compensation as a credit against any invoices presented for payment for any period in which the student performed the part-time teaching service.

7. *Termination of agreement.* (a) Either party may terminate this agreement by giving 30 days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students under Schedule provision 4 shall not be considered a termination within the meaning of this provision 7.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor, other than as provided by the Contractor's standard procedures.

GENERAL PROVISIONS

Use the following clauses in educational service agreements—

1. FAR 52.202-1, Definitions, and add the following paragraphs (d) through (i).

(d) *Term* means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes *semester*, *trimester*, *quarter*, or any similar word the Contractor may use.

(e) *Course* means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) *Curriculum* means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) *Catalog* means any medium by which the Contractor publicly announces terms and

conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) *Tuition* means the amount of money charged by an educational institution for instruction, not including fees.

(i) *Fees* means those applicable charges directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203-1, Officials Not To Benefit.

3. FAR 52.203-3, Gratuities.

4. FAR 52.203-5, Covenant Against Contingent Fees.

5. FAR 52.204-1, Approval of Contract, if required by department/agency procedures.

6. FAR 52.215-2, Audit and Records—Negotiation.

7. FAR 52.215-18, Order of Precedence.

8. Conflicts Between Agreement and Catalog. Insert the following clause—

CONFLICTS BETWEEN AGREEMENT AND CATALOG

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

9. FAR 52.222-3, Convict Labor.

10. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222-26, Equal Opportunity.

11. FAR 52.233-1, Disputes.

12. Assignment of Claims. Insert the following clause:

ASSIGNMENT OF CLAIMS

NO CLAIM UNDER THIS AGREEMENT SHALL BE ASSIGNED.

13. FAR 52.252-4, Alterations in Contract, if required by department/agency procedure.

SIGNATURE PAGE

Agreement No. _____
Date _____

The United States of America

BY: _____

(Contracting Officer)

Activity _____

Location _____

(Name of Contractor)

BY: _____

(Title) _____

[56 FR 36424, July 31, 1991, as amended at 60 FR 61599, Nov. 30, 1995]

Subpart 237.73—Services of Students at Research and Development Laboratories

237.7300 Scope.

This subpart prescribes procedures for acquisition of temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at Defense research and development laboratories (10 U.S.C. 2360).

237.7301 Definitions.

As used in this subpart—

(a) *Institution of higher learning* means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution that—

(1) Is located in the United States, its possessions, and Puerto Rico;

(2) Has an accredited education program approved by an appropriate accrediting body; and

(3) Offers a program of study at any level beyond high school.

(b) *Nonprofit organization* means any organization described by section 501(c)(3) of title 26 of the U.S.C. which is exempt from taxation under section 501(a) of title 26.

(c) *Student* means an individual enrolled (or accepted for enrollment) at an institution of higher learning before the term of the student technical support contract. The individual shall remain in good standing in a curriculum designed to lead to the granting of a recognized degree, during the term of the contract.

(d) *Technical support* means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include administrative or clerical services.

237.7302 General.

Generally, agencies will acquire services of students at institutions of higher learning by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government, contracts may be made directly with students. These services are not subject to the requirements of FAR part 19, FAR 13.105, or DFARS part 219.

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Award authority for these contracts is 10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360.

[56 FR 36424, July 31, 1991, as amended at 60 FR 29500, June 5, 1995]

237.7303 Contract clauses.

Contracts made directly with students are nonpersonal service contracts but shall include the clauses at FAR 52.232-3, Payments Under Personal Services Contracts, and FAR 52.249-12, Termination (Personal Services).

Subpart 237.74—Services at Installations Being Closed

SOURCE: 59 FR 36089, July 15, 1994, unless otherwise noted.

237.7400 Scope.

This subpart prescribes procedures for contracting, through use of other than full and open competition, with local governments for police, fire protection, airfield operation, or other community services at military installations to be closed under the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526), as amended, and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

237.7401 Policy.

The authority in 206.302-5(b)(ii) to contract with local governments—

(a) May be exercised without regard to the provisions of 10 U.S.C. Chapter 146, Contracting for Performance of Civilian Commercial or Industrial Type Functions;

(b) May not be exercised earlier than 180 days before the date the installation is scheduled to be closed;

(c) Requires a determination by the head of the contracting activity that the services being acquired under contract with the local government are in the best interests of the Department of Defense.

(d) Includes the requirement of subpart 222.71, Right of First Refusal of Employment, unless it conflicts with

the local government's civil service selection procedures.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

237.7402 Contract clause.

Use the clause at 252.237-7022, Services at Installations Being Closed, in solicitations and contracts based upon the authority of this subpart.

[59 FR 36089, July 15, 1994, as amended at 60 FR 29500, June 5, 1995]

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 239.70—Exchange or Sale of Information Technology (IT)

Sec.

239.7000 Scope of subpart.

239.7001 Policy.

239.7002 Conditions for using exchange/sale.

239.7003 Procedures.

Subpart 239.71—Security and Privacy for Computer Systems

239.7100 Scope of subpart.

239.7101 General.

239.7102 Security against compromising emanations.

239.7102-1 General.

239.7102-2 Validation of TEMPEST compliance.

239.7102-3 Contract clause.

Subpart 239.72—Standards

239.7200 Scope of subpart.

239.7201 [Reserved]

239.7202 Waivers.

Subpart 239.73—Acquisition of Automatic Data Processing Equipment by DoD Contractors

239.7300 Scope of subpart.

239.7301 Applicability.

239.7302 Approvals and screening.

239.7303 Contractor documentation.

Subpart 239.74—Telecommunications Services

239.7400 Scope.

239.7401 Definitions.

239.7402 Policy.

239.7403 Regulatory bodies.

239.7404 Foreign carriers.

239.7405 Authority to contract for telecommunications services.

239.7406 Cost or pricing data and information other than cost or pricing data.